

## Guardianship Program Rules

### 700 Certification Maintenance Regulations

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## Guardianship Program Rules

### 701 Purpose

Once certified, all professional guardians and agencies must maintain their certification through ongoing continuing education and reporting requirements as identified in these Regulations.

## Guardianship Program Rules

### 702 Definitions

702.1 "Agency" means any legal entity in the State of Washington authorized by its formation documents to act as a fiduciary, guardian, or limited guardian. (Revised 3-8-10).

702.2 "Designated CPG" means the certified professional guardians within an agency who have the final decision-making authority for incapacitated persons or their estate on behalf of the agency. (Revised 4-13-15)

702.3 "Fees and Filing Requirements Table" refers to the listing of Board-approved fees for the various CPG and agency application and reporting requirements identified in these Regulations. The Fees and Filing Requirements Table is accessible to the public online at [http://www.courts.wa.gov/programs\\_orgs/guardian](http://www.courts.wa.gov/programs_orgs/guardian) .

702.4 "GR 23" refers to Washington State Court General Rule 23 which establishes the scope and authority of the CPG Board, minimal qualifications for guardian and agency applicants, and mandatory ongoing guardian and agency disclosure requirements. Washington State Court Rules are found at [www.courts.wa.gov/court\\_rules](http://www.courts.wa.gov/court_rules).

## Guardianship Program Rules

### 703 Annual Certification Fee and GR 23(e) Disclosure

703.1 Schedule of Fees. The Board shall determine a schedule of fees for annual certification and other processing as may be required. All fees shall be published annually by the Board in the Fees and Filing Requirements Table at [www.courts.wa.gov/programs\\_orgs/guardian](http://www.courts.wa.gov/programs_orgs/guardian). Every certified professional guardian (CPG) and Certified Professional Guardian Agency (Agency) shall pay one annual fee, based on the state fiscal year (July 1 – June 30), through the Administrative Office of the Courts (AOC). Failure to pay the required fees shall subject the CPG or Agency to revocation of existing certification or denial of an application for certification.

### 703.2 Annual Certification Fee and GR 23(e) Disclosure

703.2.1 Every CPG and Agency must pay an annual certification fee, which must be paid to the AOC by August 1 each year. Every certified guardian and agency must also submit a GR 23(e) Disclosure by this date.

703.2.2 The Board may establish a tiered annual certification fee structure based on guardians and agencies' exemption from requiring Errors and Omissions Insurance, as described in 704.3. 703.2.3. The annual fee for individuals on inactive status is one-half the full annual fee. In accordance with the state fiscal year, it is due annually on August 1.

703.2.3 Failure to pay the annual certification fee and submit the GR 23(e) Disclosure by August 1 will subject the certified guardian or agency to a late fee as identified in the Fees and Filing Requirements Table.

### 703.3 Failure to Pay the Annual Certification Fee and File the Required GR 23 (e) Disclosure

703.3.1 Failure to pay the required annual certification fee and late fee and submit the required GR 23 (e) Disclosure by October 1 shall subject the CPG or Agency to revocation of certification by the Board.

703.3.2 To effect such decertification, the Board shall send a written notice of non-compliance to the CPG or Agency by certified mail, directed to the CPG's or Agency's last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPG or Agency of the pendency of decertification for failure to pay the required annual certification fee and late fee and submit the required declaration. The notice shall further advise the CPG or Agency that if the CPG or Agency believes that an administrative error has been made and that the CPG or Agency is not in default on the obligation to submit the annual certification fee and late fee and the required declaration, the CPG or Agency may file a petition requesting an administrative hearing. The petition shall set forth in detail the facts supporting the CPG's or Agency's claim that an administrative error has been made by the Board and must be signed under penalty of perjury. The CPG or Agency must file the petition within ten calendar days of notice of the pendency of decertification. (Amended 11-8-04)

703.3.3 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPG or Agency. (Amended 11-8-04)

703.3.4 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPG or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPG or Agency. Any such order shall be final. (Amended 11-8-04)

## Guardianship Program Rules

### 704 Insurance

704.1 Purpose. The purpose of this regulation is to provide coverage for damages resulting from unintentional errors and omissions of the guardian and its employees.

704.2 Requirements. Certified professional guardians (guardians) and certified professional guardian agencies (agencies) shall maintain a minimum of \$500,000.00 of errors and omissions insurance which covers the acts of the guardian or agency, and employees of the guardian or agency, unless exempted or waived by this regulation.

704.3 Exemptions. Guardians or agencies with 25 or fewer guardianship case appointments at one time and with less than \$500,000.00 total countable guardianship assets under management are exempt from the requirement of maintaining errors and omissions insurance as set forth in this regulation. With respect to this regulation, only those appointments held in the name of the guardian or agency shall be counted toward the caseload or monetary limit.

### 704.4 Countable Guardianship Assets

704.4.1 "Countable guardianship assets" shall consist of all real property, money, stocks, bonds, promissory notes and other investments in all of the guardianship estates currently managed by the guardian or agency. The value of an asset shall be its fair market value. In determining the value of an asset, the value as determined by a county assessor, or public price listed on a recognized exchange, may be used as its fair market value. The value of an asset shall not be reduced by the amount of any encumbrance on the asset. Insurance policies and other securities shall be included at face value or as listed on a recognized exchange. Countable guardianship assets shall not include burial trusts, pensions, or personal property other than as described in this regulation.

704.4.2 Issues as to whether or not an asset should be included in the countable guardianship assets of a guardian or agency shall be resolved with a preference toward including the asset as a countable guardianship asset.

### 704.5 Annual E & O Insurance Declaration

704.5.1. By August 1 each year, every guardian and agency shall file with the Board an E & O Insurance Declaration signed under penalty of perjury, on a form approved by the Board, stating that the guardian or agency either maintains a policy of errors and omissions insurance, or is exempt from said requirement, or has petitioned for and received a waiver based on a determination by the Board that it is impractical for the guardian or agency to comply with this regulation and the guardian or agency has provided a satisfactory alternative that meets the purpose of this regulation.

704.5.2. A guardian or agency who is required by this regulation to carry an errors and omissions policy shall include a declaration page from its policy of errors and omissions insurance of not less than five hundred thousand dollars (\$500,000) with the guardian's or agency's annual declaration signed under penalty of perjury.

704.5.3 At any time, the Board may request information from the guardian or agency to determine whether the guardian or agency meets the requirements of this regulation. Failure of the guardian or agency to cooperate may subject the guardian or agency to disciplinary action under this regulation.

#### 704.6 Duty to Report Loss of Insurance or Change of Status

704.6.1 A guardian or agency shall report to the Board in writing any lapse or cancellation of errors and omission coverage within fifteen (15) calendar days of the notice to the guardian or agency of that cancellation or lapse and provide a copy of the notice of non-renewal from the insurance company. The guardian or agency shall have forty-five (45) calendar days from notice to the guardian or agency of that cancellation or lapse to meet the requirements of this regulation and to file a declaration under penalty of perjury on a form approved by the Board stating that the guardian or agency meets the requirements of regulation 117.

704.6.2 A guardian or agency who has previously claimed exempt status pursuant to this regulation, whose caseload changes during the year so that the guardian or agency is no longer exempt, shall within fifteen (15) calendar days of the status change file a declaration under penalty of perjury with the Board on a form approved by the Board stating how the guardian or agency meets the requirements of this regulation.

#### 704.7 Failure to Comply

704.7.1 Failure to comply with this regulation in any part may subject the guardian and/or agency to the disciplinary sanctions listed in the Disciplinary Regulations, including suspension or revocation of certification.

704.7.2 Failure to submit the required E & O Insurance Declaration by August 1 will subject the guardian and/or agency to a special service fee if paid before September 1.

704.7.3 In the event of a guardian's or agency's failure to comply with this regulation, the Board shall send a written notice of noncompliance with this regulation to the guardian or agency by certified mail, directed to the last known address as maintained on the records of the Administrative Office of the Courts. The notice shall advise the CPG or Agency of the pendency of decertification for failure to submit the required declaration. The notice shall further advise the CPG or Agency that if the CPG or Agency believes that an administrative error has been made and that the CPG or Agency is not in default on the obligation to submit the required declaration, the CPG or Agency may file a petition requesting an administrative hearing. The petition must set forth facts either explaining how the guardian or agency has complied with this regulation or, if the guardian or agency acknowledges that there has not been compliance with the regulation, then the facts in support of why the Board should not take disciplinary action against the guardian or agency. The petition must be signed under penalty of perjury by the guardian. The guardian or agency must file the petition with the Board within ten (10) calendar days of notice of noncompliance by the Board.

704.7.4 If a petition is filed, the Chair of the Board shall appoint a three-member Review Panel to conduct a hearing on the petition. In the sole discretion of the Review Panel, the hearing may be held by telephone. The Review Panel shall make written findings and a recommendation as to whether the petition should be granted. The findings and recommendation of the Review Panel shall be filed with the Board and served by first-class mail on the CPG or Agency.

704.7.5 The Board shall review the decision of the Review Panel and shall make a decision approving or denying the petition. If the petition is denied, then the Board shall decertify the CPG or Agency. The members of the Review Panel shall not participate in the decision of the Board. A copy of the Board's order shall be sent by certified mail to the CPG or Agency. Any such order shall be final.

## 704.8 Waiver

704.8.1 A guardian may request a waiver from the requirement in this regulation that the guardian maintain errors and omissions insurance. (The term "guardian" in this section refers to either an individual or an agency.) To be eligible for a waiver, the guardian must show that it is impractical for the guardian to obtain such insurance and that the guardian will provide a satisfactory alternative to such insurance.

704.8.2 It is impractical for a guardian to obtain errors and omissions insurance if a guardian provides documentation and verifies under penalty of perjury that the guardian has applied and has been rejected by at least two insurance carriers for errors and omissions coverage or that the guardian has had errors and omissions insurance cancelled by the insurance provider or underwriter. A satisfactory alternative to such insurance is one which provides an adequate guarantee that any damages resulting from the unintentional errors and omissions of a guardian and its employees will be compensated in like amounts as the amount of coverage required under this regulation for errors and omissions insurance. Such alternatives may include a general purpose bond in the amount of \$500,000, or evidence of security in the amount of \$500,000, or such other alternative that provides for financial responsibility in the amount of \$500,000.

704.8.3 To request a waiver, the guardian must file a written petition with the Board stating why it is impractical for the guardian to obtain insurance and describing the alternative to insurance that the guardian will provide. The petition must be signed by the guardian under penalty of perjury. If the petitioner is an agency, one of the designated guardians for the agency must sign the petition. The petitioner must submit copies of the denial or cancellation of coverage received by the petitioner, and copies of the applications submitted by the guardian for said coverage. The petitioner may include other written materials in support of its petition. The petitioner must file the petition and supporting materials electronically with the Board unless permission is granted by the Board to file materials in a paper format.

704.8.4 Petitions will be reviewed by the Financial Responsibility Committee of the Board. The members of such committee shall be appointed by the Chair of the Board. The Chair of the Board shall designate one of the members as the Chair of the committee. The term of all members, including the Chair of the committee, shall be one year.



704.8.5 The Financial Responsibility Committee shall report to the Board on the merits of the petition.

704.8.6 The Board may approve the petition, with or without conditions, or refer the petition back to the Financial Responsibility Committee for additional information, or deny the petition.

704.8.7 If the Board denies a petition, the petitioner will be given written notice of the denial and the right to appeal under these regulations.

#### 704.9 Right to Appeal the Board's Denial of a Waiver

704.9.1 Every petitioner shall have a right of appeal before an Appeals Panel.

704.9.2 A petitioner may appeal the Board's denial of a waiver of the insurance requirement in this regulation by submitting a written request to:

Certified Professional Guardian Board  
Administrative Office of the Courts  
PO Box 41170  
Olympia WA 98504-1170

The request must:

Be filed within sixty (60) calendar days of the date of the denial of the waiver by the Board; identify the petitioner; and explain fully the grounds on which the petitioner bases an appeal of the denial of waiver.

704.9.3 The Chair shall appoint an Appeals Panel made up of three Board members who did not serve on the Financial Responsibility Committee. The Chair shall name one member of the panel as the chair of the panel.

704.9.4 The petitioner may submit to the AOC additional written material which may include statements, correspondence, affidavits, and memoranda of law or other information which the petitioner believes will assist the Appeals Panel in reviewing the denial of the waiver. All written materials must be received by the AOC within 30 days after the filing of the notice of appeal. AOC will supply the Appeals Panel with the appeal, all attachments, and all other material relating to the original petition for a waiver and the appeal. The Appeals Panel may use written stipulations. The date of review of the appeal will be not more than sixty (60) calendar days from the date of receipt of the appellant's materials by the AOC. The AOC will notify the appellant of the scheduled date for the consideration of the appeal. An Appeals Panel will not consider any request for appeal that does not strictly comply with the times stated, unless waived by the Appeals Panel. Upon a showing of good cause, the Appeals Panel may waive the time requirements. The assigned Appeals Panel shall consider the written material submitted. The Appeals Panel may, in its sole discretion, make a decision based solely on the written record, or it may request an oral presentation by the appellant. The appellant shall be informed of the place, time, and duration of an oral presentation. Telephone conferences may be held at the discretion of the Appeals Panel.

Within twenty (20) calendar days after the date of review of the appeal, the assigned Appeals Panel shall file with the AOC written findings of fact, conclusions of law, and a recommendation to the Board to approve or deny the appeal. The AOC shall notify the petitioner of the findings, conclusions, and recommendation of the Appeals Panel within five (5) business days.

Within sixty (60) calendar days, the Board shall review the findings, conclusions and recommendation of the Appeals Panel. No further oral or written argument will be allowed the parties, and no further evidence may be submitted to the Board. The Board shall adopt, modify, or reverse the findings, conclusions, and recommendation of the Appeals Panel. A copy of the Board's decision, as set forth in the minutes of the Board meeting or in a separate written decision of the Board, shall be served on the appellant by mail within thirty (30) calendar days.

704.10 An individual may not practice as a professional guardian unless he or she maintains errors and omissions insurance or has been granted a waiver by the Board except during any periods that the Board suspends the requirement to maintain errors and omission insurance.

704.11 Regulation 117 shall not apply to guardians or agencies if the Board determines that errors and omissions insurance is not generally available, is cost prohibitive, or for any other reason the Board decides to suspend the requirements of this regulation.

## Guardianship Program Rules

### 705 Obligation to Disclose

705.1 Pursuant to GR 23(e), a certified professional guardian or certified agency shall disclose to the Board on a continuing basis the circumstances listed in the rule. Disclosure shall take place in writing within forty-five (45) calendar days of the occurrence of the circumstance. If the event is the issuance of a court order, ruling or judgment, then the forty-five (45) calendar days shall start to run upon entry of the court order, ruling or judgment. (Adopted 5-10-04)

705.2 The guardian shall disclose every court order, ruling or judgment of the type described in GR 23(e) issued by any judicial officer. (Adopted 5-10-04)

705.3 The guardian shall disclose every court order, ruling or judgment of the type described in GR 23(e) even if the guardian or another party has filed a motion for revision, a motion for reconsideration, a notice of appeal, or any other motion or petition requesting a review, reconsideration or appeal of the court order, ruling or judgment. (Adopted 5-10-04)

705.4 Failure to disclose pursuant to GR 23(e) or these regulations shall be grounds for discipline of the guardian. (Adopted 5-10-04)

## Guardianship Program Rules

### 706 Changes in Designated Guardians

706.1 Pursuant to General Rule of Court (GR) 23, a certified agency must have at least two individual certified professional guardians designated as having final decision-making authority for incapacitated persons or their estates (“designated guardians.”)

706.2 If the agency adds an additional designated CPG, the agency must provide the AOC with an Acceptance of Designated CPG form within 30 days of the addition. Failure to do so may result in disciplinary action. (Adopted 1-9-12)

706.3 If a change in circumstances results in an agency having only one designated guardian, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The agency shall have sixty (60) calendar days from the date the agency is no longer in compliance with GR 23 to add a designated guardian to the agency. During that sixty- calendar-day period, the agency must file a copy of its board minutes or a board resolution designating an additional guardian as a person with decision-making authority for incapacitated persons or their estates with the Certified Professional Guardian Board. If the agency fails to meet the requirements of GR 23 and these regulations regarding the required number of designated guardians, the Board may decertify the agency. The Board shall send the agency written notice that the Board intends to decertify the agency at least fifteen (15) calendar days before the Board takes action.

706.4 If a change in circumstances results in an agency no longer having any designated guardians, the agency shall notify the Board within five (5) calendar days of the change of circumstances. The AOC shall send the agency a notice of noncompliance by mail. The notice shall state that the Board will decertify the agency unless within fifteen (15) calendar days the agency files proof with the Board that the agency has at least one designated guardian. Said proof shall be in the form of board minutes or a board resolution designating a certified professional guardian with decision-making authority for incapacitated persons or their estates. If the agency files proof with the Board that it has one designated guardian, then Regulation 706.3 shall apply. The sixty-day period referenced in Regulation 706.3 shall be deemed to have commenced on the same date as the fifteen–day period in this regulation. If the agency does not file proof within the fifteen-day period in this regulation that the agency has at least one designated guardian, then the Board may decertify the agency.

706.5 If a change in circumstances results in an agency having no designated guardians, the agency shall within ten (10) calendar days notify any Superior Court that has appointed the agency as guardian in a case that is still an active guardianship case. The agency shall file a notice in each active guardianship case stating that the agency has no designated certified professional guardian with final decision-making authority for incapacitated persons or their estates. In the notice, the agency shall describe a plan to correct this situation or to transition the guardianships to qualified guardians or

agencies. The agency shall file a copy of this notice with the Board. If the agency fails to file this notice with the court or the Board, the Board may decertify the agency.

706.6 The Board may decertify an agency for its failure to file any notice required under Regulation 706. The Board shall send the agency notice at least fifteen (15) calendar days before the Board intends to take such action.

706.7 When an agency is decertified, the Board shall notify the superior courts of the state.

## Guardianship Program Rules

### 707 Inactive Status

707.1 A CPG or Agency may voluntarily request inactive status by notifying the Board in writing of the date the change in status is to be effective and by complying with the requirements of this regulation. AOC staff is authorized to grant inactive status to CPGs or Agencies that qualify under these Regulations. AOC staff denials to inactive status request must be reviewed and approved by the Certification and Applications Committee.

707.2 A CPG on voluntary inactive status by the Board is not required to pay the full annual fee, but shall pay in accordance with Regulation 703.2.3. A CPG on voluntary inactive status is required to file an E&O Declaration and the GR 23(e) Disclosure.

707.3 A CPG on voluntary inactive status may return to active status by filing a petition to return to active status with the Board within two (2) years from the date that voluntary inactive status was granted. The CPG must pay the annual fee and meet any additional requirements for CPGs.

707.4 A CPG on inactive status longer than two years from the date of transfer to inactive status can only be returned to active status after review by the Application Committee. The Application Committee may require the Guardian to complete all or a portion of the initial certification process.

707.5 Prior to requesting inactive status, the CPG shall:

707.5.1 Comply with all statutory and court-ordered requirements for discharge from responsibilities as a guardian in each case in which the CPG has been appointed, with the exception that a guardian who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian may retain guardianship over two incapacitated persons;

707.5.2 File with the Board an affidavit showing:

707.5.2.1 Compliance with these requirements.

707.5.2.2 The address where communications may be directed to the inactive CPG or Agency, and acknowledging a requirement to keep their address current with the AOC for 36 months following surrender.

707.5.2.3 After being placed on inactive status, the former CPG shall not accept any new clients or engage in work as a CPG until return to active status.

707.5.2.4 The CPG or Agency shall file the affidavit or declaration required by this regulation within sixty (60) calendar days of the date of the written notice to the Board of the intent to go on inactive status.

707.6 Failure to file the compliance affidavit or failure to comply with other statutory and court-ordered requirement shall subject the CPG or Agency to revocation of existing certification.

707.7 The CPG or Agency may revoke the notice of intent to go on inactive status by notifying the Board in writing.

## Guardianship Program Rules

### 708 Voluntary Surrender of Certification

708.1 A CPG or Agency may voluntarily surrender certification by notifying the Board in writing of the date the surrender is to be effective and by complying with the requirements of this regulation. AOC staff is authorized to grant voluntarily surrender status to CPGs or Agencies that qualify under these Regulations. AOC staff denials to voluntarily surrender status request must be reviewed and approved by the Certification and Application Committee. (Adopted 11-12-01) (Amended 1-13-03)

708.2 The surrender of certification shall not be effective until the CPG or Agency has met the following requirements:

708.2.1 Complied with all statutory and court-ordered requirements for discharge from responsibilities as a guardian in each case in which the CPG or Agency has been appointed, with the exception that a guardian who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of court-appointed guardian may retain guardianship over two incapacitated persons;

708.2.2 Filed with the Board an affidavit or declaration signed under penalty of perjury stating:

708.2.2.1 Compliance with these requirements.

708.2.2.2 The address where communications may be directed to the former CPG or Agency, and acknowledging a requirement to keep their address current with the AOC for 36 months following surrender.

708.2.2.3 That after surrender of certification, the former CPG or Agency shall not accept any new clients or engage in work as a CPG or Agency unless recertified following the rules and regulations applicable to new applicants.

708.2.3 The CPG or Agency shall file the affidavit or declaration required by this regulation within sixty (60) calendar days of the date of the written notice to the Board of the intent to surrender certification.

708.3 Failure to file the affidavit or declaration required by this regulation or failure to comply with other statutory or court-ordered requirements regarding discharge from responsibilities as a guardian shall subject the CPG or Agency to revocation of certification.

708.4 The CPG or Agency may revoke the notice of intent to surrender certification by notifying the Board in writing.